108

AMER RECORDS AND BRIEFS

Supreme Court, U.S.
FILED

No. 07-1545 JUN 10 2008

OFFICE OF THE CLERK

In The

Supreme Court of the United States

Donna Guy Watson, *pro se*
Petitioner

v.

Allen Ray Watson Respondent
and
Mark A. Smedal, Attorney of Record
and *pro se* Respondent

On Petition for A Writ of Certiorari To The Kentucky Court of Appeals

Petition for Writ of Certiorari

Donna Guy Watson. *pro se*
2103 Evergreen Road
Louisville, KY 40223
502-244-8827 or
502-593-6200

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LAW LIBRARY

QUESTIONS PRESENTED

Whether Donna Guy Watson, mother of Dennis "Denny" Allen Watson and Administratrix of his Estate, may sue in matters related to having insurance proceeds paid to his estate without enjoining his estate.

Whether the insurance proceeds from the State Farm Life Policy should have been paid to the Estate of Dennis Allen Watson rather than Allen Ray Watson, his father.

Whether Summary Judgment regarding payment of the State Farm Insurance proceeds was improperly granted in the lower court.

Whether the standard cited by the Court of Appeals to allow for an appeal of the summary judgment in the defamation case/privilege claim was met based on Mr. Smedal tacitly admitting the defamatory statements were not relevant to the determination of the case. To claim privilege the comments must be relevant.

Whether Summary Judgment granted by the lower court in the matter regarding defamation and privilege was properly granted.

Whether Petitioner's individual rights were denied by the Kentucky Courts based on the due process clause and equal protection clause in the Fourteenth Amendment of the United State Constitution.

LIST OF PARTIES

Pursuant to Rule 14.1(b), all parties appear in the caption of the case on the cover page.

TABLE OF AUTHORITIES CITED

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Hayes v Rogers, 447 S.W.2d 5997-598. 11

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Schmitt v Mann 163 S.W.2d 281. .11

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari is issued to review the judgment below.

OPINIONS BELOW

The opinion of the Kentucky Court of Appeals dated **September 21, 2007**, appears at Appendix A to this Petition and is unpublished.

The various Opinions, Orders and Judgments of Louisville, KY Circuit Court, Division Eleven, (dated **06/21/06, 07/11/06**, and **03/02/05**), appear at Appendix B to this Petition and are unpublished.

JURISDICTION

The date on which the Kentucky Court of Appeals decided my case was **September 21, 2007**. A copy of the decision appears at Appendix A.

A timely petition for rehearing was thereafter denied on **November 20, 2007**, and a copy of the order denying rehearing appears at Appendix D.

A timely petition for discretionary review was denied by the Kentucky Supreme Court on **March 12, 2008**, and a copy of the order denying discretionary reviews appears at Appendix C.

The jurisdiction of this Court is invoked under 28 U.S.C§1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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KY CR 17.01 Real Party of Interest 6, 7

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KY CR 56.07 Affidavits Made in Bad Faith. 9

KY SCR 3.130(4.1) Truthfulness in Statements to Others 10

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STATEMENT OF CASE

Brief Factual Background

- Donna Guy Watson, Petitioner, and Allen "Ray" Watson, one of the Respondents, were married in 1968 and divorced in 1989,
- There were two children from the marriage: Kimberly "Kim" Watson and Dennis "Denny" Allen Watson.
- Denny worked for and with his father.
- Denny died sometime in June, 2004 (estimated June 10th).
- His body was found by Kim at his home on June 30th, 2004.
- Mr. Watson filed the insurance claim July 4th, 2004 and received settlement prior to Donna Watson being appointed administratrix of Denny's Estate.
- Donna Watson, Petitioner and Denny's mom became Administratrix of his Estate in August, 2004.
- Irregularities were found in Denny's State Farm Insurance Policy forms that dated back to 1993.

- A motion was filed in Probate to have Mr. Watson pay the proceeds to Denny's Estate due to alterations in the insurance forms.
- Mr. Smedal, attorney for Mr. Watson, filed a response to the motion that contained false information regarding Denny's personal affairs and a total character assault on Ms Watson.
- Mr. Smedal had prior knowledge that the information he presented was riddled with lies and misrepresentations about Ms Watson's character and false statements about Denny's business.
- The Probate Judge said the insurance determination would have to be made by a higher court.
- Petitioner filed a complaint in Circuit Court for the insurance proceeds to be paid to Denny's Estate and defamation of character on the part of Mr. Watson and Mr. Smedal.
- The trial court granted summary judgment on both matters to Mr. Watson and Mr. Smedal.

- An appeal was filed with the Kentucky Court of Appeals where it was decided that the insurance claim could not be brought because Petitioner failed to enjoin Denny's Estate; the summary judgment for the defamation was upheld. No determination on the insurance matter was given since the opinion ruled the Petitioner could not bring the action.

Authority to Sue

Judge Taylor's Opinion, rendered September 21, 2007, stated that Denny's Estate should be enjoined for Donna Watson, administratrix of his estate, to sue for payment of the insurance proceeds to Denny's Estate. I am the administratrix of Denny's Estate and his mom. I was present and still married to Ray Watson at the time the original State Farm Policy was purchased. In either case, *CR 17.01* allows me to bring suit as the administratrix of my son's estate and request proceeds be paid to the estate: *CR 17.01* allows me to bring suit as Denny's mom and request

proceeds be paid to his estate. The *rules for joining parties to the case* offer no exception that would negate *CR 17.01*. The court, at its discretion, could join Denny's Estate at any point in the proceeding if it felt it should be enjoined in the action *CR 21*.

The decision by the Court of Appeals denied Petitioner's right to due process guaranteed in the *14th Amendment* of the *US Constitution*. It further denied equal protection under the law guaranteed in the *14th Amendment* of the *US Constitution*. The Opinion shows a lack of understanding of the circumstances surrounding the insurance settlement, as well as other factual misunderstandings in this matter, e.g. the time when Mr. Smedal became involved, etc. The decision of the Court of Appeals disallowing the insurance case needs to be reversed.

Insurance

Sometime during an eleven week period from Denny's 21st birthday, October 27, 1992, to January, 1993, a change of ownership form was presented to

State Farm Insurance with Denny signing as new owner of the policy. Unfortunately, his name was scratched out and Allen Ray Watson's was entered. No initials or indication of any type that Denny knew of his name being removed is available and no successor/beneficiary form was presented for Denny or for Ray Watson as the "claimed new owner" of the policy. (State Farm advised Mr. Watson that a new one was necessary or the proceeds would be paid to the owner's estate.) Kentucky's insurance code clearly states that no alterations may be made to an insurance policy without the expressed consent of the owner, per *KRS 304.14.090(1)*. Absence of the consent makes Denny the owner of the policy. Absence of the successor/beneficiary form makes the Estate the beneficiary.

In an attempt to authenticate the policy change form, affidavits from the State Farm agent, Bob Blair, and Ray Watson were presented by Mark Smedal. The agent claimed that he remembered meeting with Ray and Denny, changing the form himself then signing the bottom of the form as

agent for State Farm. This violates *KRS 304.14.090(3).*

In addition to the insurance code violations, the claim made by Mr. Blair, supported by Ray Watson and presented by Mark Smedal was perjured. Another individual signed the form on the agent signature line then initialed above the line indicating the signature was by someone other than Bob Blair, *CR 56.07.* (The perjured affidavits should warrant criminal investigation because they are/were relevant to the determination of this case.)

Privilege v Defamation/Slander

In the probate action, Ray Watson presented an affidavit that was full of demonstrable lies about me. Mark Smedal presented it to the court almost verbatim in his motion. Ray Watson knew the statements were false. Mark. Smedal had first hand knowledge they were false, yet presented them anyway; hence, the defamation portion of this case. Mr. Smedal claimed "privilege" in the defamation action. He sought and received summary judgment based on "privilege" claiming the

statements were relevant to the case. Circuit Court Judge Morris, as is his discretion, must have accepted in good faith that Mr. Smedal was representing the truth when claiming privilege; he ignored evidence presented to the contrary. It is understandable since the part of the code to practice law in the state of Kentucky clearly enumerates the expectations of practicing attorneys, *SCR 3.130(4.1 and 8.3)*. Mr. Smedal intentionally presented false evidence to discredit my simple request that the insurance proceeds be paid to Denny's estate.

Judge Taylor allowed for the summary judgment to stand in the Court of Appeals decision based on the fact that it was not appealed within the time allotted. It would have been difficult to appeal in the time allotted because no notification of the order was ever mailed to Petitioner. The file was kept in the Judge's office by the bench clerk for some reason. Petitioner had been verbally advised by the bench clerk that Mr. Smedal had received summary judgment, not Mr. Watson. It is not felt that the bench clerk was trying to mislead Petitioner; she was just confused with the verbiage

used in the Motion for Summary Judgment and thought. Regardless, the way the judgment was acquired and awarded needs to be reviewed by this Court.

Based on the case cited by Judge Taylor in his COA Opinion, *Sloan v Jewell Ridge Coal Corp., 347 S.W 2d 504,506 (Ky. 1961)*, review is necessary by this Court. The summary judgment needs to be set aside due to new evidence offered by Mr. Smedal: he tacitly admits the defamatory comments were not relevant to the matters before the Probate Court, a requirement in claiming privilege per *Massengale v. Lester 403 S.W.2d 701.702; Hayes v. Rogers, 447 S.W.2d 597.598; Schmitt v. Mann 163 S.W.2d 281 and Edwards v. Kentucky Utilities Co., 158 S.W.2d.935*, cases cited by Respondent/counsel when requesting Summary Judgment. The irrelevant nature of the comments and the fact they were misrepresentations of my character requires reversal of the previous rulings.

REASONS FOR GRANTING PETITION

This Court's intervention is sought to correct the erroneous decisions of the lower courts. The lower courts did not consider:

1. The Fourteenth Amendment in the United States Constitution guarantees equal protection under the law. The decisions made in the Kentucky Court of Appeals case and in the lower court in Louisville did not offer any protection, much less equal, to my case. The lower courts ignored laws, case law and rulings that would have allowed Petitioner to present the case fairly which would have led to a different outcome in every question. The Court of Appeals decision revoked my right to sue thereby avoiding a decision on the insurance claim. This needs to be corrected.

2. Summary Judgment was incorrectly granted by Circuit Court in both the defamation case and insurance case. Kentucky law states that summary judgment cannot be granted if there are material facts in dispute. Also, summary judgment requires the Court view the decision in the light most favorable to the

non-moving party. *Publishers Press, Inc., Plaintiff, v. Technology Funding, Inc. Defendant, Civil Action No. 07-48-C, United States District Court for the Western District of Kentucky, Louisville Division, 2008 U.S. Dist. Lexis 2137, January 10, 2008, Decided.*

3. It is a perception of the public that character smashing is a common defense offered up by attorneys in an attempt to disguise weak arguments when responding to serious issues. The financial cost of doing battle against such personal attacks is out of reach for most Americans, which is why I am *pro se*. The vicious attack to my character will forever be attached to the final documents associated with my son's life. To summarily dismiss the attack based on privilege undermines justice and subverts individual rights. The damage is far beyond any dollar figure that can be awarded. Now that Mr. Smedal has owned that the statements were not relevant to the issues presented in Probate, the defamation claim deserves to be heard and/or reversed.

4. Mr. Smedal encouraged false testimony in the probate action and

in this case, a practice akin to what happened in *Sheri Berrier v. Lewis S Bizer, 1999-SC-94850DG Supreme Court of Kentucky 57 S.C.3d 271;2001 Ky.* The above case is published but the Court did not rule on the deceptive practices of defense attorney, Mark Smedal. It is time for the problem to be addressed. Such activity fattens the pockets of unethical individuals who choose to practice this type of law; clogs court dockets; and does immeasurable harm to the opposition and our justice system. Like damage done by unscrupulous prosecutors, e.g. Michael Nyphong, Mr. Smedal should be held accountable to the full extent of the law for the personal attack to my character. Perhaps it will signal the serious nature of the problem and the willingness of the Supreme Court of the United States to protect the rights of those harmed by overzealous attorneys out for easy money, quick settlements and a win at any cost.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

06/10/08
Date

Donna Guy Watson,
pro se
2103 Evergreen Road
Louisville, KY 40223
502-244-8827
502-593-6200

Supreme Court, U.S.
FILED

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Petitioner

v.

Allen Ray Watson Respondent
and
Mark A. Smedal, Attorney of Record
and *pro se* Respondent

On Petition for Writ of Certiorari To The Kentucky Court of Appeals

APPENDICES TO ATTACH TO PETITION FOR WRIT OF CERTIORARI

Donna Guy Watson. *pro se*
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APPENDIX A

KENTUCKY COURT OF APPEALS OPINION AFFIRMING THE RULINGS OF THE LOWER COURT
RENDERED: SEPT 21, 2007

RENDERED: SEPTEMBER 21, 2007;
10:00A.M.
NOT TO BE PUBLISHED
COMMONWEALTH OF KENTUCKY
COURT OF APPEALS
NO. 2006-CA-001598-MR

DONNA
GUY WATSON APPALLANT
LANT

v. APPEAL FROM
JEFFERSON CIRCUIT COURT
HONORABLE
GEOFFREY P.MORRIS. JUDGE
ACTION NO. 05-CI-001341

ALLEN
RAY WATSON AND
MARK A. SMEDAL APPELLEES

OPINION AFFIRMING

** ** ** ** **

BEFORE: COMBS, CHIEF JUDGE; ACREE AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Donna Guy Watson brings this *pro se* appeal from a July 11, 2006, summary judgment of the Jefferson Circuit Court dismissing her claims. We affirm.

Donna and Allen divorced in 1989 after nearly twenty-two years of marriage. They had two children, Dennis Watson and Kimberly Watson. Dennis passed away on June 30, 2004. Donna was appointed administratrix of his estate. Subsequently, a dispute arose between Donna and Allen concerning proceeds of a Sate Farm life insurance policy that insured Dennis's life. During the probate action, Mark A. Smedal was employed as Allen's counsel. As administratrix, Donna claimed that the estate was entitled to the proceeds from the State Farm life insurance policy. It appears that State Farm paid the proceeds to Allen as the primary beneficiary thereunder.

On February 10, 2005, Donna filed a *pro se* complaint in the Jefferson Circuit Court against Allen and Mark.[1] Therein, Donna sought recoupment from Allen of the State the State Farm life insurance proceeds. She also sought damages against Allen and Mark for defamation and slander in

[1] Curiously, Donna Guy Watson did not file the February 10, 2005, complaint in her capacity as administratrix of the Estate of Dennis Allen Watson

connection with statements made by them during the probate proceedings. On March 2, 2005, the circuit court entered an order Allen and Mark under **KY. R. Civ. P. (CR) 12.02 and CR 56.02.** The court concluded that statements made during a pending judicial proceeding were privileged. The March 2, 2005, order included complete **CR 54.02** language. Thereafter, on July 11, 2006 the circuit court entered summary judgment concluding that the estate was not entitled to the proceeds from the State Farm life insurance policy. On August 3, 2005, Donna filed a notice of appeal specifically identifying the July 11, 2006, order only. This appeal follows.

We initially observe that Donna has filed a *pro se* brief with this Court. In her brief, Donna states that there were "lies and misrepresentations" perpetrated by Allen and Mark in the probate action and that the proceeds of the State Farm life insurance policy should have been paid to the estate. While Donna has devoted four pages of her brief to these arguments, she has failed to set forth any sound legal reason or authority why the

circuit court's dismissal of her claims was improper. While arguing that the policy's ownership was fraudulently transferred from Dennis to Allen, Donna does not dispute that the designated beneficiary under the policy was always Allen. As such, the State Farm life insurance policy proceeds were properly tendered to Allen, as beneficiary. Moreover, under the alleged facts, only the estate could bring a claim for the State Farm life insurance proceeds, not Donna in her individual capacity. The estate was neither a party to the action below nor to this appeal, which is fatal to Donna's claim for recovery of the State Farm life insurance proceeds.

As to the dismissal of the defamation claim, we do not believe that this issue is properly before us. The defamation claim was dismissed by a March 2, 2005, order, and the circuit court made this order final and appealable under **CR 54.02.** However, Donna failed to file a timely appeal from this final order. **CR 73.02(2)**

It is well-established that "in order to secure a reversal of a judgment, it is incumbent upon the

appellant to show error and to overcome the presumption that the trial court's decision was correct." *Sloan v. Jewel Ridge Coal Corp., 347 S.W.2d 504,506 (Ky. 1961).* Here, Donna has simply failed to demonstrate any error and to overcome the presumption that the circuit court's decision was proper. Simply put, we believe the circuit court properly concluded that there existed no material issue of fact and that Allen and Mark were entitled to judgment as a matter of law. Thus, summary judgment was correctly entered.

For the foregoing reasons, the summary judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:
Donna Guy Watson, Pro Se
Louisville, Kentucky

BRIEF FOR APPELLEES:
Mark A. Smedal
Louisville

APPENDIX B

JUDGMENTS, ORDERS AND NOTES RELATED TO MATTERS IN THE JEFFERSON COUNTY CIRCUIT COURT
DATES ARE:

07/11/06 Order Granting Summary Judgment on Remaining Claim of Plaintiff

06/21/06 Opinion and Order Denying Motion for Relief

03/02/05 Summary Judgment, notes and letter

NO. 05 CI 01341
JEFFERSON CIRCUIT COURT
DIVISION ELEVEN (11)

DONNA GUY WATSON **PLAINTIFF**

v. **ORDER GRANTING SUMMARY JUDGMENT ON REMAINING CLAIM OF PLAINTIFF**

ALLEN RAY WATSON
DEFENDANTS

*** *** *** *** ***

This matter having come before the Court on the motion of defendant Allen Ray Watson ("Ray Watson") for Summary Judgment on the remaining claim of the plaintiff, Donna Guy Watson (Donna Watson"): and

The sole remaining claim of Donna Watson being a demand that Ray Watson pay over to the Estate of Dennis A. Watson ("Dennis Watson"), the late son of Donna and Ray Watson, the proceeds of a certain State Farm Life insurance policy, with a face amount of $100,000.00, that Ray Watson

procured on the life of Dennis Watson; and

The Court having reviewed the motion, memorandum in support, supporting affidavits, and the other pleadings and papers of record herein; and

The Court being otherwise sufficiently advised in the premises; and

The Court having found that there are no material factual issues in dispute and that Ray Watson is entitled to summary judgment pursuant to Civil Rule 56 as a matter of law;

IT IS HEREBY ORDERED that the motion for summary judgment is GRANTED and the remaining claim of Donna Watson is hereby dismissed with prejudice.

IT IS FURTHER ORDERED that Ray Watson shall recover his costs herein expended subject to the applicable Civil Rules and Rules of the Jefferson Circuit Court.

THIS IS A FINAN AND APPEALABLE ORDER AND THERE IS NO JUST CAUSE FOR DELAY.

ENTERED	s/Judge Morris
IN COURT	Geoffrey P. Morris,
JULY 11 2006	Judge, Jefferson
BY: signature	Circuit Court
Deputy Clerk	Division Eleven (11)

DATE: (BLANK)

TENDERED BY:

SMITH & HELMAN

By: s/Mark Smedal
Mark A. Smedal
600 West Main Street, Suite 100
Louisville, Kentucky 40202
(502) 540-5700
(502) 540-1217 (fax)
Counsel for Allen Ray Watson

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CASE NO. 05-DI-1341
JEFFERSON CIRCUIT COURT
DIVISION ELEVEN (11)

DONNA
GUY WATSON PLAINTIFF

VS. **OPINION AND ORDER**
DENYING MOTION FOR RELIEF

ALLEN RAY WATSON &
MARK SMEDAL DEFENDANTS

****

This matter comes before the Court on the Plaintiff Donna Guy Watson's Motion for Relief from Judgment pursuant to CR 60.02 entered by this Court on March 2, 2005, wherein the Court dismissed Ms. Watson's defamation claims against both Ray Watson and Mark Smedal with prejudice. The Court heard oral arguments on the instant motion on June 19, 2006, and, being sufficiently advised, will deny the motion.

ORDER

WHEREFORE IT IS HEREBY ORDERED AND ADJUDGED that Plaintiff's Motion for Relief from Judgment be and hereby is **DENIED.**

There being no just cause for delay, this is a final and appealable Order.

s/Geoffrey P. Morris
Geoffrey P. Morris,
Judge, Jefferson
Circuit Court

ENTERED IN COURT
MICHAEL M. LOSAVIO, CLERK
JUN 21 2006
By: signature (cannot read name)
DEPUTY CLERK

NO. 05 CI 01341 JEFFERSON CIRCUIT COURT
DIVISION THIRTEEN (13)

DONNA GUY WATSON **PLAINTIFF**

v. ORDER GRANTING MOTION FOR DISMISSAL OF CLAIMS PURSUANT TO CIVIL RULES 12.02(f) AND 56.01

ALLEN RAY WATSON and MARK A. SMEDAL **DEFENDANTS**

*** *** *** *** ***

This matter having come before the Court on the motion of defendants Allen Ray Watson ("Ray Watson") and Mark A. Smedal ("Smedal") to Dismiss the defamation claims set forth in the Complaint of the plaintiff, Donna Guy Watson ("Donna Watson") pursuant to Civil Rule 12.02(f) and Civil Rule 56.02; and

The Court having reviewed the motion, the materials of record herein, and being otherwise duly advised in the premises; and

The Complaint herein stating on its face that the claimed defamatory statements were made

during and in connection with a pending judicial proceeding; and

In any event, there are no factual matters which are material to the resolution of the motion which are in dispute;

NOW, THEREFORE, the Court hereby grants the motion and the defamation claims of Donna Watson against Ray Watson and Smedal are dismissed with prejudice.

As a matter of law, even if the statements complained of were defamatory, they were privileged as set forth in the authorities set forth in the Motion to Dismiss. *This court Reviewed the response*

This is a final and appealable order and there is no just cause for delay.

s/Judge Morris
Geoffrey P. Morris,
Judge Jefferson
Circuit Court
Division Thirteen
(13)

Date: ENTERED
IN COURT
MAR 2 2005
TONY
MILLER,
CLERK
BY:signed
DEPUTY
CLERK

Page 2

The small print on the above page indicates where Judge Morris made the hand written note on the page.

The reverse side of the order reads:

Motion
for
Partial
Dismissal
of
Claims

Hold
for
Response
s/Judge Morris (I believe)

Letter to Judge Morris from Mr. Smedal, who copied Petitioner on it (after the fact).

March 2, 2005

Via Hand Delivery

Hon. Geoffrey P. Morris
Jefferson Circuit Court
Division Thirteen
700 West Jefferson Street
Louisville, Kentucky 40202

Re: Donna Guy Watson v. Allen Ray Watson and Mark A. Smedal Case No. 05-CI-01341, Jefferson Circuit Court Division Thirteen (13)

Dear Judge Morris:

We have received a response from the plaintiff to the petition motion to partially dismiss the claims of the plaintiff. Therefore, it appears that the motion stands "submitted" and I have enclosed an AOC-280 form.

Thank you for your assistance with this matter. Please let me know if you have any questions.

Very truly yours,

Smith & Helman

s/Mark A. Smedal
Mark A. Smedal

Enclosure.

cc: Mr. Ray Watson
Ms. Donna Watson

APPENDIX C

SUPREME COURT OF KENTUCKY ORDER DENYING DISCRETIONARY REVIEW: ENTERED MARCH 12, 2008

SUPREME COURT OF KENTUCKY

2007-SC-0947-D
(2006-CA-1598)

DONNA
GUY WATSON MOVANT

v. JEFFERSON CIRCUIT COURT
NO. 2005-CI-1341

ALLEN
RAY WATSON, and
MARK SMEDAL RESPONDENTS

ORDER DENYING
DISCRETIONARY REVIEW

The motion for review of the decision of the Court of Appeals is denied.

ENTERED March 12, 2008

s/Justice Lambert
CHIEF JUSTICE

APPENDIX D

ORDER DENYING PETITION FOR REHEARING FROM THE KENTUCKY COURT OF APPEALS: DATED NOV 20 2007

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS

No. 2006-CA-001598-MR

DONNA
GUY
WATSON APPELLANT

v. APPEAL FROM JEFFERSON
CIRCUIT COURT
ACTION NO. 05-CI-001341

ALLEN RAY WATSON
AND
MARK A. SMEDAL APPELLEES

ORDER
DENYING PETITION FOR
REHEARING

** ** ** ** **

BEFORE: COMBS, CHIEF JUDGE, ACREE AND TAYLOR, JUDGES

The Court having considered the Petition for Rehearing, and being sufficiently advised, it is ORDERED that the same is hereby DENIED.

Entered:
Nov 20 2007

s/Judge Acree
Judge, Court Of Appeals

Whether Summary Judgment granted by the lower court in the matter regarding defamation and privilege was properly granted.

Whether Petitioner's individual rights were denied by the Kentucky Courts based on the due process clause and equal protection clause in the Fourteenth Amendment of the United State Constitution.

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STATEMENT OF CASE

Brief Factual Background

- Donna Guy Watson, Petitioner, and Allen "Ray" Watson, one of the Respondents, were married in 1968 and divorced in 1989,
- There were two children from the marriage: Kimberly "Kim" Watson and Dennis "Denny" Allen Watson.
- Denny worked for and with his father.
- Denny died sometime in June, 2004 (estimated June 10th).
- His body was found by Kim at his home on June 30th, 2004.
- Mr. Watson filed the insurance claim July 4th, 2004 and received settlement prior to Donna Watson being appointed administratrix of Denny's Estate.
- Donna Watson, Petitioner and Denny's mom became Administratrix of his Estate in August, 2004.
- Irregularities were found in Denny's State Farm Insurance Policy forms that dated back to 1993.

- A motion was filed in Probate to have Mr. Watson pay the proceeds to Denny's Estate due to alterations in the insurance forms.
- Mr. Smedal, attorney for Mr. Watson, filed a response to the motion that contained false information regarding Denny's personal affairs and a total character assault on Ms Watson.
- Mr. Smedal had prior knowledge that the information he presented was riddled with lies and misrepresentations about Ms Watson's character and false statements about Denny's business.
- The Probate Judge said the insurance determination would have to be made by a higher court.
- Petitioner filed a complaint in Circuit Court for the insurance proceeds to be paid to Denny's Estate and defamation of character on the part of Mr. Watson and Mr. Smedal.
- The trial court granted summary judgment on both matters to Mr. Watson and Mr. Smedal.

- An appeal was filed with the Kentucky Court of Appeals where it was decided that the insurance claim could not be brought because Petitioner failed to enjoin Denny's Estate; the summary judgment for the defamation was upheld. No determination on the insurance matter was given since the opinion ruled the Petitioner could not bring the action.

Authority to Sue

Judge Taylor's Opinion, rendered September 21, 2007, stated that Denny's Estate should be enjoined for Donna Watson, administratrix of his estate, to sue for payment of the insurance proceeds to Denny's Estate. I am the administratrix of Denny's Estate and his mom. I was present and still married to Ray Watson at the time the original State Farm Policy was purchased. In either case, *CR 17.01* allows me to bring suit as the administratrix of my son's estate and request proceeds be paid to the estate: *CR 17.01* allows me to bring suit as Denny's mom and request

proceeds be paid to his estate. The rules for joining parties to the case offer no exception that would negate *CR 17.01*. The court, at its discretion, could join Denny's Estate at any point in the proceeding if it felt it should be enjoined in the action *CR 21*.

The decision by the Court of Appeals denied Petitioner's right to due process guaranteed in the *14th Amendment* of the *US Constitution*. It further denied equal protection under the law guaranteed in the *14th Amendment* of the *US Constitution*. The Opinion shows a lack of understanding of the circumstances surrounding the insurance settlement, as well as other factual misunderstandings in this matter, e.g. the time when Mr. Smedal became involved, etc. The decision of the Court of Appeals disallowing the insurance case needs to be reversed.

Insurance

Sometime during an eleven week period from Denny's 21st birthday, October 27, 1992, to January, 1993, a change of ownership form was presented to

State Farm Insurance with Denny signing as new owner of the policy. Unfortunately, his name was scratched out and Allen Ray Watson's was entered. No initials or indication of any type that Denny knew of his name being removed is available and no successor/beneficiary form was presented for Denny or for Ray Watson as the "claimed new owner" of the policy. (State Farm advised Mr. Watson that a new one was necessary or the proceeds would be paid to the owner's estate.) Kentucky's insurance code clearly states that no alterations may be made to an insurance policy without the expressed consent of the owner, per *KRS 304.14.090(1)*. Absence of the consent makes Denny the owner of the policy. Absence of the successor/beneficiary form makes the Estate the beneficiary.

In an attempt to authenticate the policy change form, affidavits from the State Farm agent, Bob Blair, and Ray Watson were presented by Mark Smedal. The agent claimed that he remembered meeting with Ray and Denny, changing the form himself then signing the bottom of the form as

agent for State Farm. This violates *KRS 304.14.090(3).*

In addition to the insurance code violations, the claim made by Mr. Blair, supported by Ray Watson and presented by Mark Smedal was perjured. Another individual signed the form on the agent signature line then initialed above the line indicating the signature was by someone other than Bob Blair, *CR 56.07.* (The perjured affidavits should warrant criminal investigation because they are/were relevant to the determination of this case.)

Privilege v Defamation/Slander

In the probate action, Ray Watson presented an affidavit that was full of demonstrable lies about me. Mark Smedal presented it to the court almost verbatim in his motion. Ray Watson knew the statements were false. Mark Smedal had first hand knowledge they were false, yet presented them anyway; hence, the defamation portion of this case. Mr. Smedal claimed "privilege" in the defamation action. He sought and received summary judgment based on "privilege" claiming the

statements were relevant to the case. Circuit Court Judge Morris, as is his discretion, must have accepted in good faith that Mr. Smedal was representing the truth when claiming privilege; he ignored evidence presented to the contrary. It is understandable since the part of the code to practice law in the state of Kentucky clearly enumerates the expectations of practicing attorneys, *SCR 3.130(4.1 and 8.3).* Mr. Smedal intentionally presented false evidence to discredit my simple request that the insurance proceeds be paid to Denny's estate.

Judge Taylor allowed for the summary judgment to stand in the Court of Appeals decision based on the fact that it was not appealed within the time allotted. It would have been difficult to appeal in the time allotted because no notification of the order was ever mailed to Petitioner. The file was kept in the Judge's office by the bench clerk for some reason. Petitioner had been verbally advised by the bench clerk that Mr. Smedal had received summary judgment, not Mr. Watson. It is not felt that the bench clerk was trying to mislead Petitioner; she was just confused with the verbiage

used in the Motion for Summary Judgment and thought. Regardless, the way the judgment was acquired and awarded needs to be reviewed by this Court.

Based on the case cited by Judge Taylor in his COA Opinion, *Sloan v Jewell Ridge Coal Corp., 347 S.W 2d 504,506 (Ky. 1961),* review is necessary by this Court. The summary judgment needs to be set aside due to new evidence offered by Mr. Smedal: he tacitly admits the defamatory comments were not relevant to the matters before the Probate Court, a requirement in claiming privilege per *Massengale v. Lester 403 S.W.2d 701.702; Hayes v. Rogers, 447 S.W.2d 597.598; Schmitt v. Mann 163 S.W.2d 281 and Edwards v. Kentucky Utilities Co., 158 S.W.2d.935,* cases cited by Respondent/counsel when requesting Summary Judgment. The irrelevant nature of the comments and the fact they were misrepresentations of my character requires reversal of the previous rulings.

REASONS FOR GRANTING PETITION

This Court's intervention is sought to correct the erroneous decisions of the lower courts. The lower courts did not consider:

1. The Fourteenth Amendment in the United States Constitution guarantees equal protection under the law. The decisions made in the Kentucky Court of Appeals case and in the lower court in Louisville did not offer any protection, much less equal, to my case. The lower courts ignored laws, case law and rulings that would have allowed Petitioner to present the case fairly which would have led to a different outcome in every question. The Court of Appeals decision revoked my right to sue thereby avoiding a decision on the insurance claim. This needs to be corrected.

2. Summary Judgment was incorrectly granted by Circuit Court in both the defamation case and insurance case. Kentucky law states that summary judgment cannot be granted if there are material facts in dispute. Also, summary judgment requires the Court view the decision in the light most favorable to the

non-moving party. *Publishers Press, Inc., Plaintiff, v. Technology Funding, Inc. Defendant, Civil Action No. 07-48-C, United States District Court for the Western District of Kentucky, Louisville Division, 2008 U.S. Dist. Lexis 2137, January 10, 2008, Decided.*

3. It is a perception of the public that character smashing is a common defense offered up by attorneys in an attempt to disguise weak arguments when responding to serious issues. The financial cost of doing battle against such personal attacks is out of reach for most Americans, which is why I am *pro se*. The vicious attack to my character will forever be attached to the final documents associated with my son's life. To summarily dismiss the attack based on privilege undermines justice and subverts individual rights. The damage is far beyond any dollar figure that can be awarded. Now that Mr. Smedal has owned that the statements were not relevant to the issues presented in Probate, the defamation claim deserves to be heard and/or reversed.

4. Mr. Smedal encouraged false testimony in the probate action and

in this case, a practice akin to what happened in *Sheri Berrier v. Lewis S Bizer, 1999-SC-94850DG Supreme Court of Kentucky 57 S.C.3d 271;2001 Ky.* The above case is published but the Court did not rule on the deceptive practices of defense attorney, Mark Smedal. It is time for the problem to be addressed. Such activity fattens the pockets of unethical individuals who choose to practice this type of law; clogs court dockets; and does immeasurable harm to the opposition and our justice system. Like damage done by unscrupulous prosecutors, e.g. Michael Nyphong, Mr. Smedal should be held accountable to the full extent of the law for the personal attack to my character. Perhaps it will signal the serious nature of the problem and the willingness of the Supreme Court of the United States to protect the rights of those harmed by overzealous attorneys out for easy money, quick settlements and a win at any cost.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

06/10/08
Date

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